

FROM

(TUE) 10. 30' 01 13:38/ST. 13:37/NO. 3561892859 P 2

RULE 63 (37 CFR § 1.63)  
DECLARATION FOR PATENT APPLICATION  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

As a below named inventor, I hereby declare that my residence, post office address and citizenship are as stated below next to my name, and I believe I am an original, first and joint inventor, of the subject matter which is claimed and for which a patent is sought on the invention entitled "DATA MIRRORING BETWEEN CONTROLLERS IN AN ACTIVE-ACTIVE CONTROLLER PAIR", the specification of which is identified as Attorney File No. 4430-34 and attached hereto.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability in accordance with 37 CFR 1.56(a) and (b) as set forth on the attached sheet indicated Page 3 hereof and which I have read.

I hereby claim foreign priority benefits under 35 U.S.C. 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)			Priority Claimed	
<u>Number</u>	<u>Country</u>	<u>Day/Month/Year Filed</u>	<u>Yes</u>	<u>No</u>
None				

I hereby claim the benefit under 35 U.S.C. 120/365 of all United States and PCT international applications listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in such prior applications in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information material to patentability in accordance with 37 CFR 1.56(a) and (b) which occurred between the filing date(s) of the prior application(s) and the national or PCT international filing date of this application:

<u>Application Serial No.</u>	<u>Filing Date</u>	<u>Status: patented, pending, abandoned</u>
None		

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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FROM

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(1) Inventor's Signature  Date 10-31-01

Inventor's Name (typed): Richard W. Busser

Citizenship: U.S.A.

Residence: 1013 Chestnut Drive  
Longmont, Colorado 80503

Post Office Address\*: Same as Residence

\*Complete Post Office Address in full if different from Residence, otherwise indicate that the Post Office Address is "Same as Residence."

(2) Inventor's Signature  Date 10-31-01

Inventor's Name (typed): Ian R. Davies

Citizenship: U.S.A.

Residence: 3950 Hawthorne Circle  
Longmont, Colorado 80503

Post Office Address\*: Same as Residence

\*Complete Post Office Address in full if different from Residence, otherwise indicate that the Post Office Address is "Same as Residence."

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37 CFR §1.56(a) and (b)  
DUTY TO DISCLOSE INFORMATION MATERIAL  
TO PATENTABILITY

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application,  
and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or


(ii) Asserting an argument of a patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.\*

\*Note, 37 CFR §1.97(h) states: "The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in §1.56(b)."

## POWER OF ATTORNEY

On behalf of Chaparral Network Storage Inc., Delaware corporation having a principal place of business at 7420 East Dry Creek Parkway, Longmont, Colorado 80503 being the assignee of and owning all right, title and interest in the invention entitled "DATA MIRRORING BETWEEN CONTROLLERS IN AN ACTIVE-ACTIVE CONTROLLER PAIR", for which application for Letters Patent of the United States has been made by Richard W. Busser, said application being identified as Attorney File No. 4430-34 and executed on even date herewith, I, Thomas J. Lavan, Vice President of Corporate Development of Chaparral Network Storage Inc., hereby appoint David F. Zinger, Registration No. 29,127; Craig C. Groseth, Registration No. 31,713; Sabrina C. Stavish, Registration No. 33,374; Todd P. Blakely, Registration No. 31,328; Lewis D. Hansen, Registration No. 35,536; Joseph E. Kovarik, Registration No. 33,005; Gary J. Connell, Registration No. 32,020; Wannell M. Crook, Registration No. 31,071; Douglas W. Swartz, Registration No. 37,739; Bruce A. Kugler, Registration No. 38,942; Robert R. Brunelli, Registration No. 39,617; Tejpal S. Hansra, Registration No. 38,172; Dana Hartje Cardwell, Registration No. 40,638; Angela K. Dallas, Registration No. 42,460; Benjamin B. Lieb, Registration No. 42,801; Bradley M. Knepper, Registration No. 44,189; Miriam Drickman Trudell, Registration No. 42,499; Dennis J. Dupray, Registration No. 46,299; Kenneth C. Winterton, Registration No. 48,040; Robert D. Traver, Registration No. 47,999; Brent P. Johnson, Registration No. 38,031; Mark L. Yaskanin, Registration No. 45,246; Mollybeth R. Kocalski, Registration No. 42,754; and Albert M. Crowder, Jr., Registration No. 28,063, of SHERIDAN ROSS P.C., 1560 Broadway, Suite 1200, Denver, Colorado 80202-5141, telephone number (303) 863-9700, as attorneys and agents for Chaparral Network Storage Inc. with full powers of substitution, association and revocation to prosecute the application and related U.S. and foreign applications and to transact all business in the United States Patent and Trademark Office and all foreign and international patent offices connected therewith.

By:   
Thomas J. Lavan  
Vice President of Corporate Development

Dated: October 31, 2001

VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS  
(37 CFR 1.9(f) and 1.27(c)) - SMALL BUSINESS CONCERN

I hereby declare that I am an official empowered to act on behalf of Chaparral Network Storage Inc., of 7420 East Dry Creek Parkway, Longmont, Colorado 80503, a small business concern.

I hereby declare that Chaparral Network Storage Inc. qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled "DATA MIRRORING BETWEEN CONTROLLERS IN AN ACTIVE-ACTIVE CONTROLLER PAIR" and identified as Attorney File No. 4430-34, described in the specification filed herewith.

If the rights held by the above-identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below\* and no rights to the invention are held by any person, other than the inventor, who could not qualify as a small business concern under 37 CFR 1.9(c) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

\*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27)

NAME N/A  
ADDRESS N/A  
☒ INDIVIDUAL ☐ SMALL BUSINESS CONCERN ☐ NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Date: October 31, 2001

By: Thomas J. Lavan  
Thomas J. Lavan  
Vice President of Corporate Development  
7420 East Dry Creek Parkway  
Longmont, Colorado 80503